

DISCUSSION DRAFT PROGRAMMATIC AGREEMENT

**AMONG THE
FEDERAL TRANSIT ADMINISTRATION,
AND THE
HAWAII STATE DEPARTMENT OF LAND AND NATURAL RESOURCES
HISTORIC PRESERVATION DIVISION,**

**REGARDING
THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
IN THE
CITY OF HONOLULU, HONOLULU COUNTY, HAWAII**

WHEREAS, the City and County of Honolulu (City) Department of Transportation Services (DTS) is proposing the Honolulu High-Capacity Transit Corridor Project (Project) on O'ahu and is seeking financial assistance from the Federal Transit Administration for the Project, which is therefore a Federal undertaking subject to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and its implementing regulation at 36 CFR 800; and

WHEREAS, the proposed Project is an elevated, electrically powered, fixed-guideway transit system in the east-west travel corridor between East Kapolei and the Ala Moana Center with an approximate length of twenty (20) miles and twenty-one (21) stations; and

WHEREAS, pursuant to 36 CFR 800, the FTA has consulted with the Hawaii State Historic Preservation Division (SHPD) whose Administrator is the State Historic Preservation Officer (SHPO) for Hawai'i and the following parties:

- U.S. Navy (U.S. Naval Base Pearl Harbor)
- Historic Hawai'i Foundation
- National Park Service
- National Trust for Historic Preservation
- University of Hawai'i
- American Institute of Architects
- Hawai'i Community Development Authority
- State Office of Hawaiian Affairs
- O'ahu Island Burial Council
- Hui Malama I Na Kupuna O Hawai'i Nei (Group Caring for the Ancestors of Hawai'i)
- Royal Order of Kamehameha
- The Ahahui Ka'ahumanu (civic club formed to celebrate the life of Queen Ka'ahumanu)
- The Hale O Na Ali'i O Hawai'i
- The Daughters and Sons of the Hawaiian Warriors

- Association of Hawaiian Civic Clubs
- 15 Individual Hawaiian Civic Clubs; and

WHEREAS, the FTA, in consultation with the Hawai'i State Historic Preservation Division (SHPD), has defined the undertaking's Area of Potential Effects as described in Attachment A; and

WHEREAS, the FTA, in consultation with the Hawai'i State Historic Preservation Division (SHPD), has determined that proposed Project would have an adverse effect on historic resources listed in the National Register of Historic Places (NRHP) or eligible for listing in the NRHP; and

WHEREAS, this adverse effect determination results from both direct and indirect effects; and

WHEREAS, the Project will cross lands administered by the United States Navy and is subject to an approval of that crossing by the United States Navy, and FTA has therefore consulted with the United States Navy and has invited the U.S. Navy to be a signatory to this Programmatic Agreement (PA); and

WHEREAS, the Project is subject to the Native American Grave Protection and Repatriation Act (NAGPRA) where it crosses lands administered by the United States Navy; and

WHEREAS, the FTA has determined that the Project may affect significant archaeological resources listed in or eligible for listing in the NRHP; and

WHEREAS, this PA was developed with appropriate public involvement pursuant to 36 CFR 800.2(d) and 800.6(a), and the public was provided opportunities to comment on the Project and its adverse effects; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FTA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse-effect determination with the required documentation, and the ACHP has chosen not to participate formally in the consultation; and

WHEREAS, the FTA, SHPD, and the City have agreed that a phased approach to identification and evaluation of archaeological sites is appropriate, pursuant to 36 CFR 800.4(b)(2); and

WHEREAS, unless defined differently in this PA, all terms are used in accordance with 36 CFR 800.16;

NOW, THEREFORE, FTA and SHPD agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties.

STIPULATIONS

The FTA will ensure that the terms of this PA are carried out and will require, as a condition of any approval of Federal funding for the undertaking, adherence to the stipulations set forth herein.

I. Recordation and Documentation

- A) The City shall research, photograph, and record the history of each historic resource that will be fully or partially demolished, or that will require an easement for the completion of the Project. This documentation of each historic resource shall be in accordance with the standards set forth by the Historic American Building Survey (HABS) and the Historic American Landscape Survey (HALS), divisions of the National Park Service. Documentation shall be completed for the Lava Rock Curbs, Afuso House, Teixeira House, Higa Four-plex, True Kamani Trees, Kapalama Canal Bridge, O'ahu Railway & Land Company Terminal Building, O'ahu Railway & Land Company Office and Document Storage Building, and the Dillingham Transportation Building. Resource histories, site plans, and large-format, black-and-white archival photography shall be completed. Copies of this documentation shall be offered to HABS/HALS and distributed to the State Historic Preservation Division and other recognized Hawai'i repositories, including libraries, historical organizations, universities, and government agencies. If HABS/HALS declines to inventory this documentation, copies shall be archived at the SHPD office. This documentation shall be completed prior to any pre-construction or construction activities in a manner that allows for HABS/HALS and SHPD to review it prior to any physical changes to the above properties.
- B) The City shall engage a professional photographer to document adversely affected historic resources that are not subject to documentation under Stipulation I A in accordance with the National Register Photographic Imaging Policy. Documentation shall be completed for: Hono'uli'uli Stream Bridge; Waialeale Stream Bridge eastbound span and Bridge over OR&L spur; Waiawa Stream Bridge 1932 (westbound lanes); Waimalu Stream Bridge; Kalauao Spring Bridge; Kalauao Stream Bridge; Makalapa Navy Housing Historic District; Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society, Facility 1514; Hawai'i Employers Council; Institute for Human Services/Tamura Building; Nu'uanu Stream Bridge; Chinatown Historic District; and Mother Waldron Playground. Photographic documentation will include, at a minimum, representative views of relevant historic structures associated with each historic property, and representative

views of the surrounding setting of each historic property. Copies of this documentation shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies.

- C) Digital photographs completed by a professional photographer, in conjunction with the input of a supervising architectural historian, shall be completed to document select resources and viewsheds within the Area of Potential Effects. These photographs shall be taken prior to construction commencement and shall be used for interpretive materials, publications, cultural landscape reports, and historic context studies. Photographs will focus on NRHP-eligible resources and unique landscape features. Approximately 150 views will be submitted.
- D) Documentation shall also include the completion of a comprehensive video of the project corridor prior to construction commencement. Video documentation shall be completed by a professional videographer and will consist of unedited footage filmed from a moving vehicle. The project corridor shall be filmed via vehicle in each direction, from east to west, and from west to east.
- E) All historic research required to meet the Stipulations I.A through I.C shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

II. Retain/Replace Lava Rock Curbstones

- A) All lava rock curbstones removed along the edges of pavement of Dillingham Boulevard and Halekauwila Street shall be retained for reuse and reinstallation at their approximate original locations. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.

III. Cultural Landscape Reports

- A) The City shall complete three Cultural Landscape Reports (CLR) related to historic resources along the study corridor, including architect/engineer designed landscapes, such as the Dillingham Boulevard corridor; military landscapes; and agricultural landscapes such as plantations and/or taro/sugar cane fields and/or watercress farms. Copies of this documentation shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies. All historic research shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

IV. Historic Context Studies

- A) The City shall complete three Historic Context Studies related to relevant historic themes within the Area of Potential Effects (APE). This type of study assists in documenting the history of the affected area and may be used by

others in developing NRHP nominations for historic resources in the area. The Historic Context Studies to be completed include Modern Architecture in Honolulu/O'ahu; the History of Honolulu's Infrastructure (i.e., highways, bridges, pumping stations, power stations, etc.); and the History of Honolulu's Civic Architecture (i.e., fire halls, libraries, city halls, courthouses, parks, etc.). Generally, research will focus on resources within the APE but similar resources outside the APE may also be included to provide a more complete study of the topic. All historic research shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards. Historic Context Studies shall consist of a historical narrative supplemented by relevant photographs, maps, and other materials. Copies of this documentation shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, universities, and government agencies. Professional photographs will be used to illustrate these documents.

V. National Register of Historic Places Nominations

- A) The City shall complete a NRHP Multiple Property Submission (MPS), including all appropriate accompanying documentation such as photographs and mapping, for five resources related to Honolulu's Modern Architecture. These resources will be selected by the City in consultation with the SHPD from the pool of NRHP-eligible properties within the project's APE or vicinity. The MPS allows for an intensive level of documentation, while also permitting other historic resources within the Modern Architecture theme to be added to the National Register of Historic Places in the future by other researchers.
- B) Pending the Navy providing access to the site and records, the City shall complete an update to the Pearl Harbor National Historic Landmark nomination. Emphasis shall focus on those resources in closest proximity to the APE and to those not previously mentioned in prior documentation.
- C) The City shall complete an update/amendment of the NRHP nomination of the Chinatown Historic District including all appropriate accompanying documentation such as photographs and mapping.
- D) The City shall complete NRHP nominations, with all appropriate accompanying documentation such as photographs and mapping, for ten additional properties that were determined NRHP-eligible but have not been formally listed, and that are not among the resources included in the Multiple Property Submissions required by Stipulation V.A. These properties shall include the O'ahu Railway & Land Company Terminal Building and associated buildings, Forty-Niner Saimin, Aiea Cemetery (Honolulu Plantation Cemetery), Ten Courtyard Houses, the Tong Fat Building and associated buildings, West Oahu Christian Church (former American Security Bank), Sumida Watercress Farm, Hawaii Employers Council, Pier 10/11, and the Hawaiian Life Building.

VI. Interpretive Plan and Signage

- A) The City shall complete an interpretive plan for the project area and install interpretive signage at appropriate locations. The interpretive plan will highlight historical themes (i.e., Architecture, Government, Agriculture, Transportation, Military, etc.) and will interpret each one of these themes at an appropriate station location. Interpretive signage will be installed at or near relevant transit stations and on transit vehicles, as well as at other locations along the routes and in the project area. A tri-fold, color brochure describing the history of the area along the transit line shall also be completed. An interactive coloring book and child-friendly game book that would educate children about relevant local history shall be prepared by professional historians and a professional illustrator. All brochures and books shall also be produced in a digital format for electronic and/or online distribution. Copies shall be distributed to select, established local Hawai'i repositories, including the SHPD office, libraries, historical organizations, and schools. All historic research undertaken to produce interpretive materials shall be conducted by historians or architectural historians who meet the Secretary of the Interior's Professional Qualification Standards.

VII. Review and Approval

- A) The City shall submit all plans and documents required by this PA to the SHPD in advance. The City will consult with the SHPD in planning and implementing the stipulations of this PA. The SHPD shall specifically review the work completed as part of Stipulations III.A, IV.A, V.A, V.C, and V.D. The SHPD will have 30 days to review and comment on these submissions.

VIII. Post-Review Discoveries

- A) While post-review discoveries are not anticipated, the City agrees to cease all work in the vicinity of the discovery should another potential historic resource be discovered or an unanticipated adverse effect on a historic resource be found. The City will begin the consultation process with the signatories and resolve any adverse effects in accordance with Section 106 of the National Historic Preservation Act. The FTA will not allow work to resume in the vicinity of the discovery APE until the adverse effects have been resolved through an amendment of this PA or by other means consistent with 36 CFR part 800.

IX. Programmatic Stipulations for Archaeological Sites

The City shall carry the following archaeological stipulations before each construction phase.

A) Initial Planning

1. The APE for archaeological resources is defined as all areas of direct

ground disturbance. This APE for archaeology includes any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, excavations for utility installation, grading to provide parking, or other construction-related ground disturbance including preparation of construction staging areas.

2. The City shall develop an Archaeological Inventory Survey Plan (AISP) within the APE for each construction phase and shall submit it to the SHPD. The AISP shall be subject to approval by the SHPD.

B) Fieldwork: The City shall conduct archaeological fieldwork as presented in the AISP. Fieldwork required by the AISP shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection) within the APE, and
2. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted, and
3. A subsurface testing regime for locations identified in the ASIP, and
4. Analysis, including C¹⁴ dating and palynology, and
5. A report summarizing the results of the field work and analysis that shall be submitted to SHPD and shall be subject to approval by the SHPD.

C) Treatment Plans: Based on the results of the archaeological inventory survey fieldwork and in consultation with the SHPD, the City shall develop a Treatment Plan for each construction phase. The treatment plan will combine the results of the archaeological fieldwork with existing archaeological and cultural resource data to test further an appropriate sample of the Project's subsurface impacts (e.g., columns and utilities). Treatment plans shall be submitted to the SHPD and shall be subject to approval by the SHPD. Upon approval by SHPD, the City shall implement the treatment plan.

D) Mitigation Plans

Subsequent to the archaeological fieldwork and implementation of the treatment plan, the City, in consultation with the SHPD, shall develop mitigation plans as appropriate. The mitigation plans may include:

1. Archaeological Monitoring Plan

The City shall develop an archaeological resources monitoring plan specifying the locations within the construction area that require a monitor and describing the level of monitoring necessary. The monitoring plan will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).

The City shall develop a follow-up monitoring report for the Project and shall submit it to SHPD. The monitoring report shall be subject to approval by SHPD. The monitoring report, if it contains the location and description of human burial remains discovered during the course of the Project, shall remain confidential. Precise locational data may be provided in a separate confidential index. The monitoring report for construction phase of the Project shall be submitted by the City to SHPD no later than 90 days after the completion of construction of that phase.

2. Burial Treatment

The City shall prepare burial treatment documents (that may include Burial Treatment Plans, a Burial Site Component of a Data Recovery Plan, and a Burial Site Component of a Preservation Plan) and shall submit the documents to SHPD for review and approval. The document shall also be submitted to the Oahu Island Burial Council (OIBC) as appropriate under law. Any human remains found on lands owned or administered by the Federal government or the Department of Hawaiian Homelands will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

3. Data Recovery Programs

- a. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports) will be prepared as appropriate in consultation with the SHPD. Data Recovery Programs shall be submitted for review and approval by the SHPD
- b. If archaeological monitoring encounters cultural deposits, consultation with the SHPD will occur and be documented regarding the need for data recovery work for these areas.
- c. Completion of data recovery work must be verified by the SHPD prior to initiation of construction within the area of these sites.
- d. Data recovery plans specify the disposition of recovered objects and shall be submitted by the City to the SHPD for review and approval.

X. GENERAL PROVISIONS

A) Dispute Resolution

Should any party to this PA object to any action proposed pursuant to the PA, the FTA shall consult with the objecting party to resolve the objection. If the FTA determines that the objection cannot be resolved, the FTA shall forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP.

- a. Within 30 days after receipt of all pertinent documentation, the ACHP is expected to provide the FTA with its advice on the resolution of the objection. FTA will then prepare a written response that takes into account any timely advice offered by the ACHP or by other signatories to the PA. FTA will provide all consulting parties with a copy of this written response and then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within 30 days of receiving appropriate documentation about the dispute, FTA may make its final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FTA shall prepare a written response that takes into account any timely comments by other signatories to the PA and provide them and the ACHP with a copy of that response.
- c. The responsibility of the FTA and the City to carry out all actions that are required by this PA and are not affected by the dispute remains unchanged.

B) Amendments

1. Any party to this PA may request that any term or stipulation of this PA be amended, whereupon the parties to the PA shall consult with each other in accordance with 36 CFR Part 800 to consider such amendment. Any amendment must be agreed to in writing by all signatories. The amendment will be effective on the date a copy with all signatures is sent to the ACHP. If an amendment cannot be agreed upon, the signatory proposing the amendment may invoke the dispute resolution process set forth in Stipulation X.A.

2. In the event that any other Federal agency provides funding or other approval for the Project as it was planned at the time of the execution of this PA, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and so notifying the signatories to this PA. Any necessary amendments resulting will be coordinated pursuant to Stipulation X.B.

C) Termination

Any signatory may terminate this PA upon written notification of the other signatories. If the PA is terminated, all work affecting any historic resource shall cease until FTA either: (1) executes a new agreement pursuant to 36 CFR 800.6; or (2) requests, takes into account, and responds to comments of the ACHP under 36 CFR 800.7. FTA shall notify the signatories as to the course of action it will pursue.

This PA may be terminated by the execution of a subsequent agreement that explicitly terminates this PA or supersedes its terms.

D) Effective Date and Duration

1. Effective Date: This PA shall be effective upon signing of the PA and shall be considered in full force and effect until replaced by a future agreement, or until

the stipulations of the PA have been fully implemented. Once the Project, including the stipulations of this PA, has been completed, this PA shall terminate by its own course without the necessity of further action by any of the signatories to this PA.

2. Duration: This PA will be null and void if its terms are not carried out within eight (8) years from the date of its execution. Documentation tasks in Stipulations I, III, IV, and V shall be initiated within 4 years of the date of execution of this PA and shall be completed before any construction on any portion of the Project begins. Should all parties deem a time extension of this PA appropriate, such extension will be treated as an Amendment under Stipulation X.B.

E) Monitoring and Reporting

1. Any signatory to this PA may request, at any time, a review of the implementation of the terms of this PA.
2. Every six months following the execution of this PA, until it expires or is terminated, the City shall provide all signatories to this PA a summary report detailing the work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received during efforts to carry out the terms of the PA.

Execution of this Memorandum of Agreement by FTA, SHPD and the City, FTA's filing of the executed PA with the ACHP prior to FTA's approval of a construction grant for the Project, and implementation of its terms evidence that FTA has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment.

This PA and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this PA. No waiver, consent, modification or change of terms of this PA shall bind either party unless in writing and signed by all signatories and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of FTA to enforce any provision of this PA shall not constitute a waiver by FTA of that or any other provision.

F) Qualifications of Personnel

All work required to meet the Stipulations I, III, IV, and V shall be conducted by cultural resources professionals (i.e., historians, architectural historians, and/or archeologists, as appropriate) who meet the Secretary of the Interior's Professional Qualification Standards.

G) Post-Record of Decision Discoveries

Any unanticipated cultural resources discoveries not covered in other sections of this Programmatic Agreement that are revealed after the Record of Decision is issued will be subject to the Section 106 process.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

By: _____
Regional Administrator Date _____

HAWAII STATE HISTORIC PRESERVATION DIVISION

By: _____
Laura Thielen Date _____
Chairperson of Department of Land and Natural Resources

Invited Signatories:

DEPARTMENT OF NAVY

By: _____
Commander Date _____
United States Navy

NATIONAL PARK SERVICE

By: _____
Regional Administrator Date _____
National Park Service

Concurring Signatories:

By: _____
NAME

Date

ATTACHMENT 1: APE for historic resources; APE for archaeological resources

D

A

E